

1 John V. Picone III, Bar No. 187226
jpicone@hopkinscarley.com
2 Jeffrey M. Ratinoﬀ, Bar No. 197241
jratinoﬀ@hopkinscarley.com
3 HOPKINS & CARLEY
A Law Corporation
4 The Letitia Building
70 South First Street
5 San Jose, CA 95113-2406

6 ***mailing address:***

P.O. Box 1469
7 San Jose, CA 95109-1469
Telephone: (408) 286-9800
8 Facsimile: (408) 998-4790

9 Attorneys for Plaintiff
NEO4J, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 NEO4J, INC., a Delaware corporation,

14 Plaintiff,

15 v.

16 GRAPH FOUNDATION, INC., an Ohio
corporation,

17 Defendant.
18

CASE NO. 5:19-cv-06226-EJD

**JOINT STIPULATION AND ~~PROPOSED~~
ORDER FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

1 Plaintiff Neo4j, Inc. (“Neo4j USA” or “Plaintiff”) and Defendant Graph Foundation, Inc.
 2 (“GFI” or “Defendant”) submit the following Joint Stipulation and request that the Court grant
 3 Neo4j USA leave to file the First Amended Complaint attached hereto as **Exhibit A** pursuant to
 4 Rules 15(a) and 20(a) of the Federal Rules of Civil Procedure:

5 WHEREAS, Neo4j USA filed the original Complaint in this action on October 1, 2019
 6 (Dkt. No. 1);

7 WHEREAS, Plaintiff seeks to file a First Amended Complaint that, *inter alia*, (a) sets
 8 forth additional factual allegations supporting its claims asserted under the Lanham Act and
 9 California’s Unfair Competition Law; (b) adds a new claim alleging that GFI violated the Digital
 10 Millennium Copyright Act (“DMCA”) and Neo4j USA suffered injury as a result thereof; and (c)
 11 a new unfair and fraudulent business practices claim pursuant to California’s Unfair Competition
 12 Law, Cal. Bus. & Prof. Code §§ 17200 et seq., which is based on evidence discovered after the
 13 filing of the original Complaint;

14 WHEREAS, Plaintiff also seeks to file a First Amended Complaint naming Graph Grid,
 15 Inc. and AtomRain Inc. as alleged alter egos to GFI and as Defendants to the aforementioned
 16 additional claims asserted pursuant to the DMCA and California’s Unfair Competition Law, Cal.
 17 Bus. & Prof. Code §§ 17200 et seq.;

18 WHEREAS, Plaintiff seeks to file a First Amended Complaint where Neo4j Sweden AB
 19 (“Neo4j Sweden”) asserts a claim for breach of licensing agreement against GFI and joins in the
 20 new DMCA claim pursuant to Federal Rule of Civil Procedure 20(a)(1) because (a) it has the
 21 right to seek relief as the underlying copyright owner; (b) the alleged violations of the DMCA
 22 arise out of the same series of transactions and occurrences as the other claims asserted in the
 23 First Amended Complaint; and (c) questions of law and fact common to all plaintiffs will arise in
 24 relation thereto;

25 WHEREAS a copy of Neo4j USA and Neo4j Sweden’s proposed First Amended
 26 Complaint attached hereto as Exhibit A;

27 WHEREAS, the filing of this stipulation constitutes notice and service of the First
 28 Amended Complaint on GFI who shall have thirty (30) days to respond thereto from the date of

1 the filing of this stipulation, without prejudice to GFI seeking additional time to respond through
2 motion or stipulation at a later date;

3 WHEREAS, the filing of the Amended Complaint will require GFI to file a response
4 thereto that supersedes its current answer, and as a result, Neo4j USA's pending motion to strike
5 is mooted without prejudice to Neo4j USA's right to file a motion strike any answer GFI may file
6 in response to the First Amended Complaint pursuant to Federal Rule of Civil Procedure Rule
7 12(f) or any other motion pursuant to Federal Rule of Civil Procedure Rule 12;

8 WHEREAS, in the interest of judicial economy, GFI agrees that should the Court grant,
9 without leave to amend, Neo4j USA's pending motion to dismiss the Related Defendants'
10 trademark abandonment counterclaim and affirmative defense based on the theory of naked
11 licensing in the Related Case, Case No. 5:18-cv-07182-EJD, GFI agrees be bound by that
12 decision and, depending upon if and when the Court so rules on Neo4j USA's motion to dismiss
13 in the Related Case, GFI will either (a) not re-allege an Affirmative Defense for Naked License
14 Abandonment of Trademark in any answer or counterclaim that it may file in response to the First
15 Amended Complaint; or (b) will dismiss any counterclaim or affirmative defense based on similar
16 facts asserted in response to the First Amended Complaint.

17 WHEREAS, should the Court grant, without leave to amend, Neo4j USA's pending
18 motion to dismiss the Related Defendants' aforementioned trademark abandonment counterclaim
19 and affirmative defense, GFI may seek leave to amend to reassert a trademark abandonment
20 counterclaim and/or affirmative defense only upon the newly discovered facts that were not
21 otherwise discoverable with reasonable diligence as of the time of this stipulation.

22 WHEREAS, should the Court grant, with leave to amend, Neo4j USA's pending motion
23 to dismiss the Related Defendants' trademark abandonment counterclaim and affirmative defense
24 based on the theory of naked licensing in the Related Case, GFI agrees be bound by that
25 decision and, depending upon when the Court rules on Neo4j USA's motion to dismiss in the
26 related case, will conform any affirmative defense or counterclaim based on naked license
27 abandonment of trademark that it may file in response to the First Amended Complaint.

28 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties hereto

1 through their respective attorneys of record that:

2 (1) Neo4j USA and Neo4j Sweden may, pursuant to Rule 15(a) of the Federal Rules
3 of Civil Procedure, file an amended complaint in the form of the First Amended Complaint
4 attached hereto as Exhibit A;

5 (2) Neo4j Sweden may join in the First Amended Complaint pursuant to Rule 20(a)(1)
6 of the Federal Rules of Civil Procedure; and

7 (3) GFI shall have thirty (30) days to respond to the First Amended Complaint from
8 the date of the filing of this stipulation, without prejudice to GFI seeking additional time to
9 respond through motion or stipulation at a later date.

10 (4) Neo4j USA's pending motion to strike is terminated without prejudice as moot.

Dated: July 14, 2020

HOPKINS & CARLEY
A Law Corporation

11
12
13 By: /s/ Jeffrey M. Ratinoff

Jeffrey M. Ratinoff
Attorneys for Plaintiff
NEO4J, INC.

14
15
16 Dated: July 14, 2020


BERGESON, LLP

17
18 By: /s/ John D. Pernick

John D. Pernick
Attorneys for Defendant
GRAPH FOUNDATION, INC.

19
20
21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22
23 Dated: July 16, 2020

24 

Hon. Edward J. Davila
U.S. DISTRICT COURT JUDGE